

**CITY OF HORSESHOE BAY**

**ORDINANCE NO. ORD 07-10-16A**

**ANIMAL CONTROL ORDINANCE**

**AN ORDINANCE OF THE CITY OF HORSESHOE BAY, TEXAS ESTABLISHING ANIMAL CONTROL REGULATIONS; PROVIDING FOR FINDINGS OF FACT; DEFINITIONS; CARE OF ANIMALS; PROHIBITING ACTIONS AGAINST ANIMALS; RABIES CONTROL AND IDENTIFICATION; PROHIBITING KENNELS; PROVIDING FOR THE IMPOUNDMENT, REDEMPTION, AND DISPOSITION OF ANIMALS; PROHIBITING INTERFERENCE WITH IMPOUNDING OFFICERS; PROVIDING FOR DANGEROUS ANIMALS; SEIZURE OF DOGS; DANGEROUS DOG DETERMINATION; APPEAL; AUTHORITY TO SEIZE DANGEROUS AND WILD OR EXOTIC ANIMALS; ESTABLISHING THE RIGHT OF ENTRY AND QUARANTINE; PROHIBITING THE KEEPING OF WILD OR EXOTIC ANIMALS; PROHIBITING THE KEEPING OF SWINE, LIVESTOCK, FOWL AND OTHER FARM ANIMALS; REGULATING THE KEEPING OF RABBITS AND GUINEA PIGS; PROHIBITING THE KEEPING OF BEES; PLACEMENT AND BAITING OF ANIMAL TRAPS; PROHIBITING THE POISONING OF ANIMALS; PROVIDING FOR DISPOSAL OF DEAD ANIMALS; SETTING FORTH PUBLIC NUISANCES; REGULATING RESIDENTIAL BREEDERS AND ANIMAL FOSTER HOMES; PRESERVING THE AUTHORITY OF VALID WILDLIFE AND HABITAT MANAGEMENT PROGRAMS; ; ENFORCEMENT, INCLUDING CIVIL PENALTIES OF UP \$250 AND CRIMINAL PENALTIES OF UP TO \$500; PROVIDING FOR EFFECTIVE DATE; REPEALER; SEVERABILITY; PROPER NOTICE AND MEETING.**

**WHEREAS,** residents of the City of Horseshoe Bay should be free to enjoy the public streets and places without fear of attack or harassment by dogs and cats or wild or exotic animals; and

**WHEREAS,** for the health, safety, and protection of the residents of the City of Horseshoe Bay, Texas, and for the protection of the dogs and cats in the City of Horseshoe Bay, Texas, regulation of animals is desirable; and

**WHEREAS,** the City Council deems it desirable to enact an Animal Control Ordinance to cope with the challenges related to both domestic and wild animals; and

**WHEREAS,** it is the decision of the City Council of the City of Horseshoe Bay to enact an ordinance designed to protect the public health and safety; prohibition of animals running at large; reduction of stray animals; humane protection of pets; set forth penalties for violations of provisions in accordance with and pursuant to Chapter 826, Rabies, of the Health and Safety Code, Title 10 otherwise cited as the Rabies Control Act of 1981.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HORSESHOE BAY, TEXAS:**

## **I. FINDINGS OF FACT**

All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

## **II. GENERAL PROVISIONS**

### **(a) Definitions**

For the purposes of this Ordinance, the following terms, phrases and words used herein shall be interpreted to read as follows; and any words not herein defined shall be construed in the context used and by ordinary interpretation, and not as a word of art:

*Abandon* means to dump, desert, or leave any animal on public or private property with the intent of terminating any further responsibility for said animal; and shall also mean failing to timely redeem any animal impounded or quarantined by the city, as specified herein.

*Adequate/proper shelter* means shelter for a pet that shall effectively protect the animal from any form of cold, overheating, inclement weather and direct effects of wind, rain, snow, ice or the sun. By way of example, and not limitation, a shelter may consist of a three-sided structure, with a roof. The shelter shall provide shade during hot weather months with provisions for cooling the animal when temperatures exceed 90 degrees Fahrenheit. During temperatures 40 degrees Fahrenheit or lower, auxiliary heat or clean, dry bedding material shall be provided for insulation against the cold.

*Animal* means any living creature classified as a member of the animal kingdom including, but not limited to, birds, fish, mammals and reptiles, but specifically excluding human beings.

*Animal control officer* means the person or persons designated by the city to represent and act for the city in the impoundment of animals, in the controlling of stray animals and all other matters as otherwise required by this Ordinance.

*Animal control facility* means an establishment that is operated, controlled or contracted with by the city for the impoundment, confinement, safekeeping, control, caring and/or destruction of animals which come into the custody of the city.

*Animal foster home* means any private premises or portion thereof on which in excess of four (4) but not more than six (6) animals belonging to either a government or non-profit owned and operated animal shelter are housed until adoption.

*Animal shelter* means any premises designated by the city for the purpose of impounding and caring for animals under the authority of this Ordinance.

*At large* means any animal, other than a domestic cat, that is not under immediate effective control of its owner as defined in this Ordinance. A domestic cat shall be considered at large when not located on the premises owned or controlled by its owner and not otherwise under immediate effective control.

*Dangerous animal* means any animal which has been determined to be dangerous as set forth herein by the animal control officer, police officer or appropriate court; which demonstrates behavior and/or possesses the vicious propensity to inflict serious bodily injury or death upon human beings and constitutes a danger to human life or domestic animals; or any animal which has behaved in such a manner that the owner thereof knows, or reasonably should know, that the animal is possessed of tendencies to commit unprovoked attacks or to injure human beings or domestic animals; or any animal certified by a doctor of veterinary medicine, licensed in the state, after observation thereof, as posing a danger to human beings or animals; or any animal that commits an unprovoked attack upon a human being or other domestic animal; or any animal that commits an unprovoked act that causes a person to reasonably believe that the animal will attack and cause bodily injury to that person.

*Domestic animal* means any animal whose physiology has been determined or manipulated through selective breeding, and which does not occur naturally in the wild, and which may be vaccinated against rabies with an approved rabies vaccine, and which has an established rabies quarantine observation period.

*Enclosure* means any structure or device used to immediately restrict any animal or animals to a limited amount of space, such as a fence, room, pen, run, cage, compartment or hutch.

*Fowl* means a bird of any kind, including, but not limited to, chickens, ducks, geese, guineas, pigeons, roosters, turkeys and pheasants.

*Guard dog* means a dog that has received protection or guard dog training and used by law enforcement, private security, or in protective functions where the dog is responsive to control by its owner or handler and used only for protective functions, irrespective of its status as a personal pet of its owner or handler.

*Guide dog* means a dog that is trained to assist a handicapped person.

*Harboring* means the keeping, raising, using, possessing and having on is premises or under his control or attempted control of an animal or animals.

*Immediate effective control* means an animal which is under the power or restraint of a person by a means of cage, leash or physical restraint. For purposes of this ordinance, an animal is not under the immediate effective control of a person when it is not restrained by means of a leash or chain of sufficient strength and not more than six (6) feet in length to control the actions of such animal while off the owner's property.

*Impound Fee* means a fee assessed for the care and keeping of an animal under the control of the city.

*Inhumane treatment of animals* means any treatment of an animal prohibited by Section 42.09 of the Texas Penal Code, Chapters 821, 822 or 826 of the Texas Health and Safety Code, as amended, or by any other provision of law including federal, state and local laws, ordinances or rules.

*Kennel* means any person or groups of persons engaged in the commercial business of breeding, buying, selling or boarding any animal or animals, excluding any person who is a passive or occasional breeder of not more than one (1) litter per calendar year.

*Livestock* means any horses, mules, donkeys, cattle, bison, goats, sheep, swine, ostriches, emus or rheas.

*Normal working day* means any other than on a weekend or holiday.

*Normal working hours* means all time from 8:00 A.M. to 5:00 P.M. during a normal working day.

*Off premises* means any animal which:

- (1) is not under immediate, effective control of a person by means of a cage, leash or physical restraint; or
- (2) even when in the visible presence of the owner, or under physical restraint, as defined herein, enters onto the private property of another person, without that property owner's consent.

*On premises* means any animal confined on the premises of the owner by a substantial fence of sufficient strength and height to prevent the animal from escaping there from or secured on the premises by a metal chain or leash sufficient in strength to prevent the animal from escaping from the premises, and so arranged that the animal will remain upon the premises and not come any closer than six (6) feet to a public walkway or sidewalk when the restraint leash is stretched to full length.

*Owner* means any person, partnership, corporation or association that harbors, shelters, keeps, controls, manages, possesses, feeds or cares for or has whole or part interest in any animal. This presumption is rebuttable and shall have the effects and consequences set forth in Section 2.05 of the Texas Penal Code, as amended. However, a person, partnership, corporation or association that feeds a stray animal does not become its owner based solely upon the act of feeding the animal

*Person* means a natural individual, firm, corporation, partnership or other legal entity.

*Pet* means any animal normally kept for pleasure rather than utility, excluding livestock.

*Public nuisance* means the following:

(1) An owner's failure to control, restrain or otherwise allow, either by conduct or condition, any animal to:

(A) Engage in conduct which establishes such animal as a "dangerous animal"; or

(B) Be "at large" as defined herein; or

(C) Cause a disturbance by excessive, continuous or untimely barking, howling, whining, crowing or otherwise make excessive noise near the private residence of another or continual barking, howling, whining, crowing or other audible noise, in excess of 15 minutes, even if in sporadic bursts, shall be prima facie evidence that the same constitutes a nuisance; or

(D) Produce maggots, flies, odors or unclean conditions sufficient to annoy adjacent property owners or residents; or

(E) Chase vehicles or molest, attack or interfere with other animals or persons on public property; or

(F) Damage, soil, defile, or defecate on private property other than the owner's property or on public walks or recreation areas unless such waste is immediately removed and properly disposed of by the owner; or

(G) Allow such fecal matter or other animal waste to accumulate to such a degree as to cause unsanitary, dangerous or offensive conditions.

(2) Any animal normally found in the wild that has entered onto any public or private property by its presence is committing a threat to public health and safety or is generally interrupting the tranquility of the location.

(3) It shall not be a defense that any Public Nuisance here defined that the responsible resident at the place where the animal or bird is kept was not at home.

*Quarter or quartered* means as it relates to livestock or other animals regulated herein, to provide shelter or to be sheltered.

*Residence* means a place, premises, dwelling or house where a person resides.

*Residential breeder* means any person licensed by the city to keep, harbor, breed and/or raise in excess of four (4) but not more than six (6) cats and/or dogs (6) months of age or older on any premises used or zoned for residential purposes and less than two (2) acres in area.

*Restraint* means secured by a leash, lead, cord, chain or rope six (6) feet or less in length; or by electronic wires, electronic restraint system, probes or other similar device; or secured within a kennel or pen, or secured within the fenced real property limits of its owner, and may not come any closer than six (6) feet to a public walkway or sidewalk when the restraint lead is stretched to full length.

*Serious bodily injury* means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. An injury characterized by severe bite wounds or severe ripping and tearing of muscle that would cause a reasonably prudent person to seek treatment from a medical professional and would require hospitalization without regard to whether the person actually sought medical treatment satisfies this definition. For purposes of this ordinance, serious bodily injury includes but is not limited to injuries for which the injured party seeks emergency or inpatient treatment irrespective of length of hospital stay.

*Stray* means an animal that is improperly restrained and that wanders upon a public place, roadway, street, highway, or the property of another person.

*Vaccination* means the inoculation of an animal with a rabies vaccine or other medicine that is accepted by the United States Department of Agriculture for use in that species, and which is administered by a veterinarian, licensed in the state, for the purpose of immunizing the animal against rabies or other diseases.

*Veterinary hospital or clinic* means any establishment that is maintained and operated by a veterinarian, licensed in the state, for the diagnosis, treatment or surgery of injuries and diseases to animals.

*Wild/Exotic animal* means any non-domesticated animal, other than livestock, that is native to a foreign country or of foreign origin or character and is not native the United States or is found wild in the United States. This shall include but not limited to:

- (1) Reptiles: venomous reptiles, any type of crocodile or alligator; or
- (2) Fish: piranha; or

- (3) Birds: condors, eagles, hawks, falcons, owls; or
- (4) Mammals: ocelots, lions, tigers, jaguars, leopards, cougars, wolves or wolf hybrids, dingoes, coyotes and coyote mixes, jackals, weasels, martens, minks, badgers, skunks, bats, raccoons, pandas, bears, kangaroos, opossums, sloths, anteaters, armadillos, monkeys, chimpanzees, gorillas, orangutans, porcupines, antelope, deer, foxes, elephants, lynx, camels, squirrels; or
- (5) Any species of animal illegal to own under federal, state or local law.

*Zoonotic disease* means an illness which is of animal origin and usually causes illness to other animals but which can be transmitted to and cause illness in humans.

To the extent not otherwise defined herein, reference may be made, for purposes of clarifying definitions, to state law and/or generally accepted industry publications.

**(b) Care of Animals**

Animals shall be provided humane care, treated and transported in a humane manner and not in violation of Section 42.09 of the Texas Penal Code, Title 10 of the Texas Health and Safety Code, as amended, or any other provision of law, including Federal, State and local laws, ordinances and rules.

**(c) Prohibited Actions Against Animals**

A person commits an offense if:

- (1) A person fails to provide an animal under his or her control and/or ownership with adequate wholesome food and water, adequate/proper shelter, and protection from inclement weather, and veterinary care when needed to prevent suffering.
- (2) A person having charge, care, custody or control of an animal places or confines such animal, or allows such animal to be placed or confined, in a motor, vehicle trailer or other enclosure under such conditions, or for such a period of time, as to endanger the health of the animal due to heat, lack of food or water, or such other circumstances as may cause injury or death to the animal.
- (3) A person treats an animal in an inhumane or cruel manner as defined by Section 42.09 of the Texas Penal Code, as amended, or Chapter 821, Texas Health and Safety Code, as amended.
- (4) A person knowingly owns, harbors, trains, sells or offers for sale any animal which is to be used for the purpose of fighting; or to be trained, tormented, badgered or baited for the purpose of causing or encouraging said animal to attack human beings or animals when not provoked, except that this subsection shall not apply to guard dogs.

- (5) A person mutilates any animal, whether such animal is dead or alive. This subsection does not apply to medical or veterinary medical research, medical or veterinary medical autopsies, or biology class use of animals for educational purposes.
- (6) A person causes an animal to fight another animal or person.
- (7) A person, other than a licensed veterinarian, docks an animal's tail, or crops an animal's ears, or castrates an animal; provided, however, this subsection shall not apply to normal livestock operations occurring within the city.
- (8) A person dyes or colors chicks, ducks, rabbits, reptiles or birds.
- (9) A person transporting an animal fails to effectively restrain an animal so as to prevent the animal from leaving or being accidentally thrown from a vehicle during normal operation of the vehicle, or fails to effectively restrain an animal so as to prevent infliction of bodily harm to a passerby. Provided, however, the provisions herein shall not prohibit a person from transporting an effectively confined or tethered dog in the open bed of a pickup truck.
- (10) A person in control of a motor vehicle strikes a domestic animal or livestock within the corporate limits of the city with such vehicle and fails to report the same to the police department as soon as practicable.(11) A person abandons any animal, including the abandonment of an impounded animal at the animal control facility with the intent to readopt the animal to avoid impoundment fees.
- (11) A person ties or tethers a dog in such a manner that prevents the animal from having access to adequate shelter, food and water.
- (12) A person ties or tethers a dog in such a manner that the animal could become entangled or injured.
- (13) A person cruelly confines an animal in a manner that prevents the animal from being able to stand to its full height, stretch out, turn around and lie down and make normal postural adjustments comfortably for a period of 24 hours or more.
- (14) A person confines an animal in such a way that the animal is forced to stand and or lay within its own feces, standing water or other unsanitary conditions.
- (15) A person pickets or ties any animal in or along any public street, alleyway, right-of-way, or other public lands for the purpose of grazing or feeding, or in such a manner as to hazard any person, other animal or vehicular traffic.



### **III. RABIES CONTROL; IDENTIFICATION(a) Reporting and Process**

- (1) Any dog or cat which bites a person shall be promptly reported to the animal control officer or police officer and shall thereupon be securely quarantined at the direction of the animal control officer, county animal health officer or police officer for a period of ten (10) days, and shall not be released from such quarantine except by written permission of the animal control officer. Such quarantine shall be at the designated animal shelter or, in a veterinary hospital of the owner's choice and at the owner's expense. In the case of dogs or cats running at large whose ownership is unknown, such animal shall be humanely destroyed as suspected of being rabid and the carcass treated in all respects according to State law. All animal bites shall be immediately reported by the investigating officer to the county animal health officer for his information or disposition of the offending animal.
- (2) The owner upon demand made by the animal control officer or police officer shall immediately surrender any animal which has bitten any person, or which is suspected of having been exposed to rabies for supervised quarantine. The expense of the quarantine shall be borne by the owner. The animal so quarantined may be redeemed by the owner if the animal is determined to be free of rabies and upon payment of all fees incurred.
- (3) If it is determined by a veterinarian that a quarantined animal shows the clinical signs of the disease of rabies, the animal control officer or police officer shall humanely destroy the animal. If an animal under quarantine dies or is destroyed, the animal control officer shall cause the head of the animal to be immediately sent to the State Health Department for pathological examination, and shall notify the proper health officer of reports of human contacts the animal may have had, and the diagnosis made of the suspected animal.
- (4) No person shall kill, or cause to be killed any rabid dog or cat suspected of having been exposed to rabies; or dog or cat which has bitten or scratched any person, except as otherwise provided herein; nor shall such dog or cat be removed from the city limits without the express written permission of the animal control officer or county animal health officer.
- (5) The carcass of any dead animal exposed or suspected of having been exposed to rabies shall be surrendered to the animal control officer or police officer. No person shall fail or refuse to surrender the carcass of any such animal upon demand there for.
- (6) It shall be the duty of every physician or other practitioner, or other persons to report to the animal control officer or police officer the names and addresses of every person treated for bites inflicted by animals.

#### **(b) State Regulations Adopted**

The city hereby adopts the Rabies Control Act of 1981 (Texas Health and Safety Code, Chapter 826) as amended, and the standards established by the state as minimum standards for rabies control and quarantine provisions within the city. In addition thereto,

all of the rabies control provisions of this ordinance, which are adopted pursuant to Sections 826.015 and 826.033 of the Texas Health and Safety Code, shall have application within the city. A copy of the statute may be obtained from the animal control officer.

(1) All dogs and cats as of four (4) months of age must be vaccinated against rabies and re-inoculated as specified by applicable County law requirements.

(2) Non-resident owners are required to maintain proof of vaccination on any animal brought in to the City on a temporary basis.

**(c) Designation of Local Rabies Control Authority**

The animal control officer shall act as the local rabies control authority for the purposes of this article and enforcing the provisions of Chapter 826 of the Texas Health and Safety Code.

**(d) Animal Identification/Registration/Vaccination**

Registration of dogs and cats is not required. However, the city strongly urges all dog and cat owners to place an identification collar including current rabies inoculation tag on their pets when outdoors so the owner can be determined should the pet be found running loose and be returned to the owner.

**(e) Kennels**

No commercial kennel shall be operated within the city limits

**IV. IMPOUNDMENT, REDEMPTION AND DISPOSITION OF ANIMALS**

Notwithstanding any other provisions of this ordinance, the city shall not impound any animal unless there is a proper facility in which to keep that animal. For the purposes of this section, a proper facility is one that adequately and humanely provides for the needs of the animal and for the protection of the public.

**(a) Impoundment Generally**

(1) Animal control and police officers hereby authorized to capture and impound any animal upon having probable cause to believe said animal to be in violation of any provision of this ordinance or state law which authorizes or requires the animal's capture and impoundment, and in so doing, to enter upon any fenced or unfenced lot, tract or parcel of land when deemed necessary for the protection of the public health, safety and welfare, as allowed by law. As a matter of policy, animal control or police officers shall not enter upon private property to capture and/or impound any animal known to belong to the owner of said property without probable cause. An animal control agent may enter

upon the property, as allowed by law, to capture an animal if it is believed that said animal poses a threat or danger to property, human beings or other animals.

(2) In addition, the animal control officer may capture and impound wild or non-domesticated animals in response to citizen's complaints of public nuisance. (3) Should any animal be found running at large or unrestrained and the ownership is known to the animal control officer, or any police officer, the owner may be cited to appear in court to answer charges of violating this ordinance in lieu of impounding the animal.

**(b) Duties of the Animal Control Officer**

(1) Immediately upon impounding an animal the ownership of which is known, the animal control officer or police officer shall attempt to notify the owner as soon as possible by phone, personal contact and/or by registered mail and document same. Notification as set out herein shall be deemed to be made on the date of mailing same. The notice shall include a description of the animal and inform the owner that should the animal not be claimed within five (5) normal working days from the date of the notice, the animal shall become the property of the city and may be subject to disposal as set out herein. Any claim thereafter shall be considered on the same basis as any other adoption request to be handled by the shelter under their policies and procedures.

(2) Except when an animal is trapped or taken from private property in connection with a complaint about such animal, and when otherwise possible and practical, the animal control officer or police officer who captures or takes possession of an animal shall make every reasonable effort to contact any local group or organization whose mission or responsibility is to assist in the welfare, relocation, medical treatment, or adoption of animals. When convenient the animal control officer or police officer will make reasonable efforts to contact a representative of said groups prior to the transport and impoundment of the animal. If the contact cannot be made prior to impoundment, reasonable efforts shall be made to contact the group or organization as soon as practical after the impoundment. Any unreasonable delays in the response of any group or organization will result in the impoundment of the animal.

(3) Animals found running at large, abandoned or otherwise seized for cause, shall be taken up by the animal control officer, or any police officer and impounded in a shelter approved for said purpose and there confined in a humane manner for a period of not less than 120 hours (5 days) or in accordance with the shelter's rules. Thereafter if not claimed by the owner or other person as prescribed herein, the animal shall be released to the shelter for their disposition in accordance with their procedures and rules. However, no impoundment period is required for an animal voluntarily delivered and released to the animal control facility or city animal control officer by its owner.

(4) After the expiration of any required impoundment period, the impounded animal shall be released to the animal control facility. At that time, the animal shall be disposed of by adoption from the facility, by offering it to a local animal humane group for adoption, or by humanely destroying the animal. No record shall be kept by the city

animal control department as to the disposition of an individual animal after release is made to the animal control facility.

(5) Any animal which is in great pain and suffering due to injury and probably will not recover, or which appears to have rabies, and/or which is at large and is posing an imminent danger to human beings or to other animals, may be destroyed by the city animal control officer or police officer.

(6) Impound periods shall be set by the holding animal shelter for animals in their care unless said animal is in the process of adjudication and then the impound period will be controlled by the jurisdictional court.

**(c) State Laws for Cat and Dog Sterilization Adopted**

The city shall comply with all sterilization laws as set forth in Chapter 828 of the Texas Health and Safety Code, as amended. A copy of the statute may be obtained from the animal control officer.

**(d) Adoption**

Adoption rules will be set by the impounding facility unless said animal is under the jurisdiction of a court of law.

Any group or organization who takes possession of a stray animal, after tending to any medical, neutering or spaying issues, shall be responsible for attempting to make adoption arrangements for the animal they have received.

**(e) Requirements to Redeem an Impounded Animal**

(1) Any owner is entitled to redemption of any animal impounded under the provisions of this ordinance upon the payment of any fees as prescribed by the shelter, court assessed fines if applicable, and occurring within the shelter's holding period of not less than five (5) days unless said animal is under the jurisdiction of a court for which adjudication must occur prior to release of the animal or enforcement action is necessary by the police department prior to release.

(2) No animal shall be redeemed unless the owner shows proof of current vaccinations as required by law. The shelter shall cause any animal impounded for which there is no proof of current vaccination, to be vaccinated by a licensed veterinarian or other authorized person prior to redemption. All vaccinations and other fees charged shall be paid by the owner of the animal prior to release of the animal. All such procedures shall be in keeping with the shelters standard policies and procedures.

## **V. INTERFERENCE WITH IMPOUNDING OFFICERS**

It shall be unlawful for any person to interfere with, or attempt to prevent, an animal control or police officer from capturing or impounding any animal which may be legally impounded or otherwise interfering with the city enforcement agent while carrying out his or her lawful duties.

## **VI. DANGEROUS ANIMALS**

### **(a) State Law Adopted**

(1) The city council hereby expressly adopts the regulations and procedures outlined in the Texas Health and Safety Code short titled Regulations of Animals, Chapter 822 and subchapters A, B, and D.

(2) It shall be unlawful for any person owning or controlling any vicious or dangerous animal to permit or allow the animal to be in contact with the public or to quarter such animal in such a manner as the general public may by design or accident come into contact with the animal. Exceptions are public service dogs under the direct control of law enforcement or authorized handler(s).

(3) Any police officer of the city shall have the right to shoot or kill any dog or cat observed by him/her to be attacking any person or persons. Said officers shall have the right to shoot such dog or cat only when it appears to such officer that it is necessary to ensure public safety or to protect the public welfare from such danger and when attempts to capture said animal are not feasible under prevailing circumstances and with due regard to safety to him/her and others.

### **(b) Seizure of Dog**

(1) Basis of seizure. The municipal court shall order the seizure of a dog and issue a warrant authorizing said seizure upon:

(A) A sworn complaint that the dog caused the death or serious bodily injury to a person; and upon

(B) A showing of probable cause to believe that the dog caused death or serious bodily injury to a person; and upon

(C) Any other basis authorized by state law.

The dog is to be seized and impounded until the court orders the disposition of the animal.

(2) Hearing. A hearing is to be set by the court not later than the 10th day after the date on which the warrant is issued. The court is to give written notice to the concerned

parties, the owner or person from whom the dog was seized, the shelter and the complainant and any other interested party, including the city attorney.

(3) Destruction of dog. The dog must be destroyed if the court finds that the dog caused the death of a person. The dog may be ordered destroyed if the court finds it caused only serious bodily injury by attacking, biting or mauling a person. If such findings are not made, the court is to release the dog to the owner, the person from whom the dog was seized or to any other authorized person.

(4) Exceptions to destruction. Even if the dog caused serious bodily injury to a person by attacking, biting or mauling, the court may not order its destruction if it also finds one of the following to be true:

(A) The dog was being used for protection of a person or a person's property and

(i) The attack, bite or mauling occurred in the dog's enclosure;

(ii) The enclosure was reasonably certain to prevent the dog from leaving the enclosure on its own;

(iii) Notice was provided of the presence of the dog;

(iv) The injured person was at least eight years old; and

(v) The injured person was trespassing in the dog's enclosure at the time of the attack, bite or mauling;

(B) The dog was not being used for the protection of a person or a person's property but

(i) The attack, bite or mauling occurred in the dog's enclosure;

(ii) The injured person was at least eight years old; and

(iii) Was trespassing in the enclosure at the time of the attack, bite or mauling;

(C) The attack, bite or mauling occurred during an arrest or other action by a peace officer while the peace officer was using the dog for law enforcement purposes;

(D) The dog was defending a person from an assault or protecting a person's property from damage or theft by the injured person; or

(E) The injured person was younger than eight years old and

- (i) The attack, bite or mauling occurred in the dog's enclosure; and
- (ii) The enclosure was reasonably certain to keep a person younger than eight years old from entering the enclosure.

**(c) Dangerous Dog Determination**

(1) An owner learns that he/she is the owner of a dangerous dog when one of the following events occurs:

(A) The owner knows of an attack as described in Texas Health and Safety Code Section 822.041(2) (A) or (B) and as provided herein;

(B) The dog makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own;

(C) The dog commits an unprovoked act in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and such act causes a person to reasonably believe that the dog will attack and cause bodily injury to that person;

(D) The owner is informed by the animal control officer that the dog is dangerous as determined by the animal control or police officer through investigations and upon sworn statements. The owner may appeal this decision to the municipal court within fifteen (15) days; or

(E) The owner receives notice that the municipal court has found the dog is dangerous after a hearing on the matter, either on a report of an attack that caused bodily injury, or after an owner fails to comply with the requirements of an owner of a dangerous dog.

(2) Criminal responsibility for the keeping of a dangerous dog may be established by intent, knowledge or recklessness.

**(d) Appeal of Dangerous Dog Determination**

Findings of the animal control and/or police officer pertaining to dangerous animals may be appealed to the city municipal court, county court, or justice court of competent jurisdiction in accordance with the Health and Safety Code, Section 822.0421(b), as amended. An owner may appeal the decision of the animal control and/or police officer to the judge of the municipal court in the same manner as an appeal is made for other criminal cases, but not later than the 15th day after the owner is notified of the city enforcement agent's determination. During the pendency of such appeal, the findings of the city enforcement agent shall be suspended; however, the animal shall continue to be

impounded at the owner's expense at the designated animal control facility for observation and to protect the health and safety of the public until a final disposition is reached, or compliance with the requirements for the keeping of a dangerous dog are satisfied, unless otherwise ordered by the court. Appeal from the municipal court determination is the same as any other appeal from the municipal court.

**(e) Report of Dangerous Dog to Municipal Court**

(1) A person may report a Section 822.041(2) incident to the municipal court requiring only the establishment of bodily injury and not serious bodily injury.

(2) The dog owner must then deliver the dog to the animal control officer not later than the 5th day from the date the owner receives notice that the report has been filed.

(3) If the owner fails to deliver the animal, the municipal court can issue a warrant authorizing the seizure of the dog. The dog will be impounded, at the owner's expense, until the court orders the disposition of the dog.

(4) Once the court has received an incident report or an application of a violation of Section 822.042(c) the court will hold a hearing to determine whether a dog is dangerous or whether the owner has complied with the requirements for an owner of a dangerous dog not later than the 10th day after the dog is seized or delivered. Texas Health and Safety Code, Section 822.0423.

(5) The appeal of the municipal court's decision is in the same manner as provided in the appeal of other municipal court cases. Texas Health and Safety Code, Section 822.0423.

**(f) Dogs that Attack Domestic Animals**

(1) The animal control or police officer, to the extent applicable, shall adhere to procedures relative to dogs that are a danger to animals, as set forth in Subchapter B, Section 822.011 et seq. of the Texas Health and Safety Code.

(2) Dogs deemed to be dangerous due to attacks on domestic animals shall be subject to the procedures set forth in this article for registration, hearing, determination and/or destruction.

**(g) Additional Authority to Seize Dangerous and Wild or Exotic Animals**

In the event that any animal is declared to be a dangerous animal, and/or where a wild or exotic animal is found in violation of any provision of this ordinance, a justice court, county court or municipal court may order the animal control officer to seize and impound such animal and shall issue a warrant authorizing the seizure. Where said animal is found at large and is presenting a clear and present danger of imminent bodily



injury or death to the city enforcement agent or any other person or animal, the animal may be destroyed and the owner notified if the owner can be established.

## **VII. RIGHT OF ENTRY/QUARANTINE**

### **(a) Right of Entry; Search Warrants**

Animal control or police officers are hereby authorized to enter upon any fenced or unfenced lot, tract or parcel of land, to the extent allowed by law, for the purpose of capturing, impounding and/or quarantining any animal upon having probable cause to believe said animal to: have bitten, injured or otherwise attacked a human being or other animal; to have, or have been exposed to, rabies or another communicable disease posing a danger to the public health, safety or welfare; or otherwise posing a clear and present danger to human beings or other animals. This authorization is granted due to the emergency created by the potential rabies hazard or danger of injury to persons or other animals, and in recognition of the likelihood that such animal will otherwise escape capture. As a matter of policy, animal control or police officers shall not enter upon private property to capture and/or impound any animal known to belong to the owner of said property without probable cause. An animal control agent may enter upon a person's property if it is believed that said animal poses a threat or danger to property, human beings or other animals, or is in violation of the restraint law.

### **(b) Failure to Deliver Animal for Quarantine**

It shall be unlawful, and a violation of this ordinance, for any person to fail to deliver an animal to the animal control officer, upon demand for impoundment, when an animal must be quarantined for legitimate medical reasons or for other health and safety reasons stated in this ordinance.

## **VIII. KEEPING OF WILD OR EXOTIC ANIMALS**

### **(a) Keeping of Wild or Exotic Animals Prohibited**

(1) Any species of vicious, dangerous, wild or exotic animal, not considered domesticated according to generally accepted animal control or veterinary practices, that if freed poses a potentially serious threat to public health, safety or welfare, or is protected by international, federal or state regulations or any other wild animal, including birds of prey capable of or inclined to do serious bodily harm to humans or other domestic animals or fowl, shall not be kept within the corporate limits of the city.

(2) A vicious, dangerous or wild animal may be impounded by the animal control officer or humanely destroyed by a police officer, if in his sole discretion such action appears to be necessary and in the interest of public safety.

**(b) Impoundment or Quarantine of Wild or Exotic Animals**

An animal control or police officer may seize and/or order the immediate impoundment or quarantine, at the owner's expense, of any wild or exotic animal found in the city where there is a potentially serious threat to public health, safety or welfare, and/or if in violation of any provision of this ordinance. The animal control or police officer may seek a seizure warrant from a justice court, county court or municipal court, which court, upon probable cause, may issue a warrant authorizing a seizure. A hearing shall be conducted on this disposition of the animal within ten (10) business days of the date of seizure. The owner or harbinger of the animal, to the extent the same is known or can be determined through reasonable due diligence, shall receive written notice of the hearing, by personal service and/or certified mail, return receipt requested, as soon as practicable but not later than five (5) days prior to the hearing.

**IX. KEEPING OF SWINE, LIVESTOCK, FOWL AND OTHER ANIMALS**

(a) It shall hereafter be unlawful for any person, firm or corporation to keep and/or feed, for the purposes of slaughter, market or for any other reason, any cattle, swine, sheep, goats, livestock, fowl, chickens or other "farm animals" in any pen or enclosure controlled by such person, firm or corporation with the city limits.

(b) Regardless of Section IX.(a), a person may keep horses, burros, cattle or sheep on their property if the property is located within a Property Owners Association that allows the keeping of horses, burros, cattle or sheep on the property.

**X. KEEPING OF RABBITS AND GUINEA PIGS**

Rabbits, and guinea pigs must be kept indoors, or if outdoors, in a secure pen or enclosure. Litter and droppings from these animals must be collected and disposed of in accordance with Section XV.(b) herein.

**XI. KEEPING OF BEES**

It is unlawful for any person to keep, or allow to be kept, bees of any specie within the city limits

**XII. PLACEMENT AND BAITING OF ANIMAL TRAPS**

**(a) Animal Traps**

Only humane live animal traps may be used for capturing animals roaming unrestrained in the city. It shall be unlawful for any person to place, set or bait any trap for the purpose of wounding or killing any animal, fowl or reptile. This section, however, does not preclude the use of commercially sold rat and mouse traps, to be utilized as intended by the manufacturer in accordance with the manufacturer's direction for use, in that person's residence, accessory structure or commercial establishment.

It shall be a violation of this ordinance to use anything other than commercially sold food to bait any trap used for the purpose of trapping any animal. Unless the adjacent properties are separated by a solid masonry or wood fence of a minimum six foot (6) height, traps used for such purpose shall not be placed or located within ten feet (10') of adjacent property lines. In the event no such fence exists and the size, shape or other characteristics of the property preclude traps from being placed or located ten feet (10') from adjacent property lines, said traps shall be placed or located as far from adjacent property lines as practicable.

In the event that a person traps a dog or cat, an animal control officer or police officer may be contacted for impoundment, redemption and disposition. See section IV.

**(b) Certain Traps Prohibited**

The placing or baiting of any steel jawed trap (commonly known as a bear trap, wolf trap or coyote trap) within the corporate limits of the city is expressly prohibited. As an exception to this subsection, governmental agencies and entities shall be permitted to use such traps and equipment necessary and permitted by state law or regulation given emergency or exigent circumstances requiring such usage exist.

**(c) Traps on Public Property**

Any animal traps found on public property other than those placed by authorized animal control officers are hereby declared to be abandoned, and the animal control officers are hereby authorized and directed to seize any such trap and process the same as abandoned property in accordance with the applicable provisions of state law and city procedures.

**XIII. POISONING OF ANIMALS PROHIBITED**

No person shall place any substance or article which has in any manner been treated with any poisonous substance, or is known to be toxic to animals, in any place accessible to human beings, birds, dogs, cats or other animals with the intent to kill or harm animals. This shall include antifreeze purposely left exposed to poison animals. This section, however, does not preclude the use of commercially sold rodent poisons when applied in accordance with the manufacturer's directions for such use, in that person's residence, accessory structure or commercial establishment.

**XIV. DISPOSAL OF DEAD ANIMALS**

**(a)** It shall be the owner's responsibility to remove and properly dispose of a deceased animal within twenty-four (24) hours of the death of the animal. If requested by the owner, the city animal control officer will pick up a deceased domestic animal if the animal has been placed in a sealed clear plastic bag and left in a convenient place adjacent to a public roadway, or at curbside.

(b) The city animal control officer or other designee by the city shall have the authority to take custody of and dispose of all deceased animals found on any roadway, street, highway, and/or public or private property where the owner cannot otherwise be identified.

## **XV. PUBLIC NUISANCES**

Any animal meeting the stated definition of Nuisance, or found trespassing upon others property shall be deemed a public nuisance, and such animal may be impounded as set out herein and humanely destroyed by an animal shelter in accordance with shelter policy if no court charges are filed.

### **(a) Maximum Number of Animals**

(1) The keeping of more than the maximum number of animals permitted by this ordinance shall be a public nuisance.

(2) It shall be unlawful to keep or harbor more than four (4) dogs and/or cats total, six (6) months of age or older on any premises used or zoned for residential purposes. However, provisions hereof shall not apply to licensed residential breeders and licensed animal foster owners.

(3) If at the time of adoption of this ordinance more than four (4) dogs and/or cats, six (6) months or older are being kept or harbored on any premises used or zoned for residential purposes, an exemption to Section XI(a)(2) may be granted by the City upon application for an exemption accompanied by a pledge that upon the death or other departure of a dog and/or cat, it will not be replaced until such time as the number of animals being kept on the premises will not exceed four (4). Such applications for exemption must be renewed annually.

### **(b) Disposal of Excrement**

(1) All animal manure and other excrement shall be disposed of in such a manner so as to prevent it from becoming a public nuisance.

(2) An owner, harborer, or other person having care, custody, or control of a dog or cat commits an offense if he knowingly permits, or by insufficient control allows, the dog or cat to defecate in the city:

(A) On private property other than property owned, leased, or controlled by the owner, harborer, or person having care, custody, or control of the dog or cat;  
or

(B) On public property or any other place to which the public or a substantial group of the public has access, including but not limited to a street, sidewalk,

alley, park, or playground, or any common area of a school, hospital, apartment house, office building, transport facility, or shop.

(3) It is a defense to a prosecution under section XV(b)(2) that:

(A) The owner, harborer, or other person having care, custody, or control of the dog or cat immediately and in a sanitary manner removed and disposed of, or caused the removal and disposal of, all excreta deposited on the property by the dog or cat;

(B) The dog was specially trained to assist a person with a disability and was in the care, custody, or control of that disabled person at the time it defecated on the property;

(C) The owner or person in control of the property had given prior consent for the dog to defecate on the property; or

(D) The dog was being used in official law enforcement activities.

(4) It shall be unlawful for the owner of or the handler of any un-spayed female dog or cat to allow the same to be in or about any public place in the city while in heat. Said animals shall, while in heat, be maintained in such a manner as not to create a disturbance or nuisance within any area of the city.

**(c) Parking of Trucks, Trailers or Vehicles in Residential Areas**

(1) It shall be unlawful for any person to park or leave standing any truck, trailer or, other vehicle that has been used for the hauling of livestock, animals, fish or fowl in a residentially zoned area of the city when notified by the city enforcement agent that such vehicle is creating a public nuisance.

(2) Upon such notification, the owner, operator, driver or other person responsible for such vehicle shall abate the public nuisance or move such vehicle to a location outside of any residentially zoned area of the city.

**(d) Noise Prohibited**

It shall be unlawful for any owner to allow an animal to cause a disturbance by excessive, continuous, habitual or untimely barking, howling, crowing or noise-making near the private residence of another. A person shall be deemed to have knowingly violated the terms of this section if such person is notified by animal control or the police department of a complaint regarding an animal noise disturbance and fails to cease and thereafter prevent its recurrence. It shall not be a defense to prosecution that the owner was not with the animal or on the premises at the time the animal made the noise.

**(e) Odors or Unclean Conditions Prohibited**

(1) It shall be unlawful for any owner to allow an animal to produce odors or unclean conditions sufficient to create a public nuisance.

(2) It shall be unlawful for any owner to allow an animal to be kept in a manner or under conditions which creates foul odors, unsanitary conditions, an unreasonable presence of vermin or their offspring, or other harmful or offensive conditions which can be attributed to the presence of the animal or to its physical or environmental conditions, including but not limited to the accumulation of animal excreta.

(3) A person who violates this section is guilty of a misdemeanor offense and, upon conviction, is punishable by a fine in accordance with the general penalty provision found in Section XVII of this code.

**(f) Animals at Large Prohibited**

It shall be unlawful for any owner to allow an animal to chase vehicles or molest, attack, or interfere with other animals or persons on public property or on private property, not owned by the animal's owner or keeper, or be at large as defined herein. All animals shall be kept under restraint. Unrestrained animals may be taken by police, the animal control officer, or any other person, and deliver same to the designated shelter or animal control officer or police officer for the city to be impounded as set out herein, as if the animal were found running at large. The City of Horseshoe Bay shall only be responsible for the impoundment fees of those animals its agents impound.

**XVI. RESIDENTIAL BREEDERS AND ANIMAL FOSTER HOMES**

Upon approval of the city council, the Development Services Department shall issue annual residential breeder and animal foster home licenses, subject to the following terms and conditions:

(a) The city council shall hold a public hearing on any application for either a residential breeder license or an animal foster home owner license or the renewal thereof.

(b) Public notice of said hearing shall be given by depositing written notice thereof in the mail addressed to the Property Owners Association ("POA") in which the proposed residential breeder or animal foster home is or will be located, if any; all owners of real property located within five hundred (500) feet of the subject property or premises, as determined from the last approved city tax roll; and by publication thereof in a newspaper of general circulation in the city.

(c) Both the mailed and published notices shall be given at least ten (10) days prior to the date set for the hearing. Such notice shall state the date, time and place of the public hearing; adequately identify the location and/or address of the subject property or

premises; state the nature of the application to be considered; and state that any party may appear in person or by attorney or agent.

(d) The public hearing procedure prescribed herein shall apply to the initial application for any such license and any application for the renewal thereof.

(e) No license for a residential breeder or an animal foster home may be issued by the City if the same is prohibited by deed restriction or restrictive covenant applicable to the property where such operation is proposed, without the consent of the applicable POA.

## **XVII. ENFORCEMENT**

### **(a) Enforcement**

The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this ordinance is subject to suit for civil penalties and/or injunctive relief as well as prosecution for criminal violations.

(1) The police department shall be responsible for enforcement of this ordinance, except as may be provided herein. Enforcement may be by the filing of a complaint in municipal court, by proceedings to enjoin nuisances or in any other manner authorized by law. Only a police officer is authorized to issue citations for a violation of this ordinance.

(2) It shall be unlawful for any person being issued a citation for a violation of this ordinance to be filed in municipal court or any civil proceeding to intentionally or knowingly fail to give the animal control or police officer his or her true name and address or to intentionally or knowingly fail to appear in accordance with the terms of a citation or civil process issued by the court or police officer.

(3) If the individual who is to receive the citation is not present, the police department may send the citation to the alleged offender by certified or registered mail, return receipt requested. If said citation should come back unclaimed, the citation shall be sent regular mail. If this regular mailing does not come back unclaimed, then service shall be deemed completed.

### **(b) Criminal Prosecution**

Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not less than fifty dollars (\$50.00) and not more than five hundred dollars (\$500.00), except as may be otherwise expressly provided by state law. Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a Class C misdemeanor.

**(c) Civil Remedies**

Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including, but not limited to the following:

- (1) injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance;
- (2) a civil penalty up to two hundred fifty dollars (\$250.00) a day when it is shown that the defendant was actually notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and

**(d) Additional Provisions**

- (1) Any person found guilty of violating any section of this ordinance three times in one year shall result in the banishment of the offending animal from the city limits of the City of Horseshoe Bay in addition to any other civil or criminal penalty.
- (2) Unless otherwise specifically set forth herein, or in state law as adopted, allegations and evidence of a culpable mental state is not required for proof of an offense defined by this Ordinance.
- (3) Nothing herein is intended to repeal, make illegal, or make inoperable a valid wildlife or habitat management program authorized by Texas Parks & Wildlife or a local taxing authority.

**XVIII. EFFECTIVE DATE**

This Ordinance shall be and become effective immediately upon and after its passage and publication as may be required by governing law.

**XIX. REPEALER**

All ordinances or parts of ordinances in force when the provisions of this Ordinance becomes effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of such conflict.

**XX. SEVERABILITY**

Should any part, sentence or phrase of this Ordinance be determined to be unlawful, void or unenforceable, the validity of the remaining portions of this Ordinance shall not be adversely affected. No portion of this Ordinance shall fail or become inoperative by reason of the invalidity of any other part. All provisions of this Ordinance are declared to be severable.



## XXI. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

**ADOPTED AND APPROVED** on this 16<sup>th</sup> day of October, 2007 by a vote of the City Council of the City of Horseshoe Bay, Texas.

# CITY OF HORSESHOE BAY, TEXAS

**Robert W. Lambert, Mayor**

**Attest:**

**/S/**  
**Toni Vanderburg, City Secretary**